

July 23, 2002

**Via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445-12th Street, SW  
Washington, DC 20554

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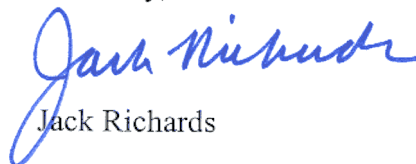
**Re: Notice of Ex Parte Presentation;  
Application of EchoStar Communications Corporation,  
General Motors Corporation and Hughes Electronics Corporation,  
Transferor; and EchoStar Communications Corporation, Transferee,  
For Authority to Transfer Control;  
CS Docket Number 01-348**

Dear Ms. Dortch:

On July 22, 2002, Bob Phillips, President and Chief Executive Officer, and Steven Berman, Senior Vice President, Business Affairs General Counsel, of our client, the National Rural Telecommunications Cooperative (NRTC), met separately with Commissioner Michael J. Copps and Alexis Johns, and Commissioner Kevin J. Martin and Catherine Crutcher Bohigian to discuss NRTC's opposition to the proposed transfer of control application of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation. Stephen M. Ryan of Manatt, Phelps & Phillips, LLP and the undersigned attended the meeting on behalf of NRTC.

Copies of the attached two-page handout entitled "The EchoStar/DIRECTV Merger Would Be Disastrous For Rural Americans," were distributed during the meeting and served as the basis for our discussions. Should you have any questions, or require any additional information, please feel free to contact the undersigned.

Sincerely,

  
Jack Richards

Ms. Marlene H. Dortch  
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**KELLER AND HECKMAN LLP**  
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## **The EchoStar/DIRECTV Merger Would Be Disastrous For Rural Americans**

The National Rural Telecommunications Cooperative is a non-profit cooperative comprised of more than 1,000 rural utilities and affiliates located in 46 states. NRTC's members and affiliates currently distribute DIRECTV programming to approximately 1.8 million rural consumers, nearly 20% of all DIRECTV subscribers. NRTC is opposed the Merger on the grounds that it would be illegal under Section 7 of the Clayton Act and contrary to the public interest under the Communications Act. In the nine months following the Merger announcement, it has become increasingly clear that the Merger would be disastrous for rural Americans.

- ▶ **The Merger remains contrary to the public interest under the Communications Act.**
  - For 25 million rural American households, the Merger would replace a thriving, competitive MVPD marketplace with a monopoly that would eliminate choice, reduce service quality and chill innovation.
  - For most other households, the Merger would reduce the number of MVPD competitors from three to two.
- ▶ **EchoStar and DIRECTV compete vigorously with cable and each other. There is no substitute for this competition in rural America.**
  - This is not a merger of failing firms: DBS subscribership increased 24% last year and is growing at 2.5 times the rate of cable.
  - EchoStar and DIRECTV recently posted glowing Earnings Reports.
  - Data recently submitted by EchoStar and DIRECTV show that they compete aggressively with each other to attract cable subscribers as well as new, non-cabled subscribers.
  - Competition between the two companies and with cable systems has pushed the DBS and the cable industries to innovate and upgrade. This innovation will suffer if the Merger occurs.
- ▶ **The geographic market for MVPD services is local, not national.**
  - Consistent with a long line of FCC decisions, the choice(s) a consumer faces at his or her home -- not in the "national market"-- defines the relevant geographic market for analyzing the impact of the Merger.
  - For 25 million U.S. households, most of which are in defined rural areas (some of which are served by NRTC), the Merger would reduce choice to one: New EchoStar.
- ▶ **"National pricing" would be unenforceable and would disadvantage rural Americans.**
  - The Applicants have failed to provide details to support their claims regarding national pricing -- the actual prices, the regulatory regime to enforce their promise, the processes to change prices and, most

importantly, how “exceptions” for local promotions will not undercut the promise of national pricing.

Even if national pricing were enforceable, it could be set artificially high so that subscriber losses in urban cabled areas would be offset by unfair profits from rural Americans without access to cable.

Contrary to their public statements and filings, EchoStar and DIRECTV do not truly offer national pricing today. They routinely price discriminate by targeting local markets with special offers (*e.g.*, Adelphia subscribers in Southern California).

EchoStar’s track record at the Commission suggests that it will not keep its “promise” of national pricing once it gets what it wants.

- ▶ **Contrary to the Applicants’ recent *ex parte* presentations, the effects of the Merger would be grossly anti-competitive.**
  - Improved volume discounts, decreased subscriber churn and reductions in SAC and G&A and are not “efficiencies,” they are the byproducts of a monopoly.
  - Reduced costs and increased revenues will not necessarily result in price reductions to consumers or enhanced services, only increased profits for the resulting monopoly.
  
- ▶ **To promote the Merger, EchoStar apparently is thwarting the development of broadband delivery by satellite.**
  - EchoStar chose to cease funding its WildBlue Ka-band project and to withdraw from StarBand’s Ku-band project.
  - EchoStar failed to commence construction of a Ka-band satellite at 83° W.L. and 121° W.L. and lost its licenses.
  - The Merger would crush competition in the nascent Ka-band and subject more than 40 million homes to a monopoly broadband provider.

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